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IN THE COURT OF APPEALS OF INDIANA

GLENN V. CALHOUN, II., a/k/a SONNY CALHOUN,	)	
Appellant-Defendant,	)	
vs.	)	No. 40A01-0512-CR-536
STATE OF INDIANA,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause No. 40C01-0502-MR-37

AUGUST 21, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

Defendant-Appellant Glenn Calhoun appeals the sentence imposed following his conviction of reckless homicide, a Class C felony, and carrying a handgun without a license, a Class A misdemeanor. We affirm.

We address one issue: whether the trial court erred in sentencing Calhoun.

Calhoun and Jan Greathouse were married in 1970. They have one daughter. Calhoun and Greathouse separated in July 2004, and Greathouse began dating Larry Mayes one month later. When the Calhouns' divorce was final in October 2004, Greathouse moved in with Mayes.

On February 12, 2005, Greathouse and Mayes attended a Valentine's Day dinner at Amvets in North Vernon, Indiana. They left the dinner at approximately 11:00 p.m. As the couple was walking towards Greathouse's truck, Greathouse noticed that Calhoun's truck was parked next to hers. As she got closer to her truck, Greathouse realized that fifty-seven-year-old Calhoun was sitting in his truck with an angry expression on his face and a gun in his hand.

Calhoun stuck the gun out of the window, and ordered Mayes to get into his (Calhoun's) truck. Mayes did not hear Calhoun, and Calhoun repeated his command. As Mayes turned to look at Calhoun, Calhoun shot Mayes. Calhoun then quickly drove out of the parking lot.

Calhoun drove to his adult daughter's rural home and knocked on the living room window at the back of the house. When his daughter opened the door, Calhoun told her that he had just killed somebody. He then told his daughter goodbye and disappeared into the woods. One week later, he knocked at his brother's door. Calhoun's brother

gave him water, orange juice, a blanket, a pair of gloves, and some candy, and Calhoun disappeared back into the woods. Calhoun's brother called the police the following day.

Calhoun lived in the woods for 44 days before he was found and arrested after an extensive manhunt. The State charged him with murder, two counts of pointing a firearm, one count of intimidation, and one count of carrying a handgun without a license.

At trial, Calhoun testified that at the time of the shooting, he still hoped that he and Greathouse would reconcile. He knew that Mayes was the only obstacle in this reconciliation and went to the Amvets dance to try and persuade Mayes to "back away" from Greathouse. *Transcript*, p. 179. According to Calhoun, Mayes grabbed the gun, the two men wrestled with it, and it discharged, killing Mayes. A jury convicted Calhoun of reckless homicide and carrying a handgun without a license.

At the sentencing hearing, North Vernon Chief of Police Jack Hatton testified about the expenses incurred during the six-week manhunt for Calhoun. According to Chief Hatton, the North Vernon Police Department spent $41,374.15 in manpower hours alone, and exhausted the department's overtime budget. Specifically, the police chief testified as follows:

> Undoubtedly put an extreme strain on the North Vernon Police Department. An extreme strain to the point of our overtime has been exhausted. We've had to seek other means to put back in the budget. We are extremely behind in our caseloads. We have yet to see the impact on all the equipment, gasoline, and everything. These numbers only reflect not all of our expenses but just a portion. We are now trying to catch up many months later of active cases, people calling us wanting to know what is going on with their case. This case did put a strain on us. We did have to ask for assistance. Indiana State Police. The Indiana Conservation. They

> have compiled a lot of money, a lot of time. And they cannot give us these figures because of time restraints. So we are way behind in doing our jobs. We are way behind the eight ball in the financial part of this investigation.

Transcript, p. 252.

Chief Hatton further testified that the Indiana State Police spent $15,440.00 in overtime and helicopter and airplane costs during a two-week period. That figure does not include the cost of land vehicles, gasoline, secretarial fees, or court dates during that two-week period or the costs of the additional four weeks of the manhunt that the State Police Department did not have time to calculate.

At the conclusion of the sentencing hearing, the trial court sentenced Calhoun as follows:

> The Court is bound by the evidence that it has heard here today and it also does not have to ignore the evidence from trial. The Court sat here, listened and observed, and can use that testimony and its impression of the case to make a decision. In this particular case, Mr. Calhoun, the Court is first going to identify, as I do in every case, not just yours, the aggravating factors that it has found and the mitigating factors, and there are several of each. On the aggravating side the Court finds [1] the extreme mental anguish caused Jan Greathouse as a result of observing the activities of this evening, February 12; [2] the nearly unimaginable position you placed your daughter in on the night of the shooting and during this trial; [3] the extreme mental anguish caused the entire Mayes family, but especially Mr. Mayes' daughter, Heidi [Davis], his only child; [4] the permanency of your actions, as they relate to Mr. Mayes; [5] the anguish caused Ms. Davis is considered by the Court to be a significant factor; [6] you had ample opportunity to reflect on your actions when you returned to the Amvets to confront your ex-wife's boyfriend at all; [7] you took a fully loaded 357 magnum handgun to confront your ex-wife's boyfriend and waited for him to come out of the building; that is a significant aggravator; [8] you were an armed fugitive from justice for nearly six weeks putting in jeopardy the lives of many law enforcement officers, the Court finds that is a significant aggravator; [8] the high cost to the taxpayers of this County and this State in attempting to apprehend you; and [9] you did, in my opinion, Mr. Calhoun, place . . . one of your brothers at least in a position of committing

> a crime and a very difficult and almost unimaginable personal situation of turning [in] one's own brother or calling law enforcement. On the mitigating side; [1] a significant mitigator[ ] is that you have no prior criminal history, Indiana courts tell me that is a significant mitigator[ ]; [2] you have been gainfully employed most of you adult working life; [3] you're an honorably discharged veteran who served overseas in Vietnam; [4] a high school graduate; [5] this crime is probably the result of circumstances unlikely to recur; [6] your civic contributions to the VFW; and [7] the fact that you have been an exemplary inmate while incarcerated at the Jennings County Jail for the past 212 days. . . .

Transcript pp. 348-50.

The court found that the nine aggravating factors outweighed the seven mitigating factors, and sentenced Calhoun to eight-years for reckless homicide, and one-year of carrying a handgun without a license. Further, the court ordered the sentences to run consecutively for a total sentence of nine years.

Calhoun now appeals his sentence. Specifically, he first contends that the trial court improperly substituted its opinion of the evidence for the jury's verdict in arriving at his sentence. In support of his contention, Calhoun directs us to *Hamman v. State*, 504 N.E.2d 276 (Ind. 1987). In the *Hamman* case, Hamman was charged with two counts of murder and one count of battery, but convicted of two counts of voluntary manslaughter and the battery charge. The trial court made the following comments at the sentencing hearing:

> The evidence in this case as to all three counts established that the defendant killed two persons, and though charged with battery as to the third person intended and attempted to kill a third person. By IC 35-41-5-1, attempt to commit a crime is made a crime of the same class as the crime attempted. However, an attempt to commit a murder is a Class A Felony punishable by a fixed term of thirty years with not more than twenty years added for aggravating circumstances or not more than ten years subtracted for mitigating circumstances, and a fine of not more than $10,000.00 . . .

> The evidence in this case was fully adequate to sustain a conviction of Murder as to Counts One and Two, although the jury returned a verdict of Voluntary Manslaughter . . .. [T]he number of shots fired and the necessity of re-aiming as a result of recoil precluded any possibility of the existence of sudden heat as a mitigating factor reducing the murder to voluntary manslaughter, although in fact the jury has returned a verdict of voluntary manslaughter.

Id. at 278.

The court then sentenced Hamman to maximum and consecutive sentences for the three convictions. On appeal, Hamman argued that the trial court imposed the harsh sentences to compensate for what it believed was an erroneous jury verdict. Specifically, Hamman claimed that the trial court enhanced each of his sentences based upon the court's belief that he should have been convicted of murder.

The Indiana Supreme Court noted that the trial court displayed its hostility to the jury verdict by condemning as unsupported the jury's belief that sudden heat had been present. *Id.* The court also found that the trial court's discussion concerning the sentencing range for attempted murder was improperly introduced into the sentencing hearing because it was not applicable when Hamman was convicted of battery rather than attempted murder. *Id.* at 278-9. Given the trial court's statements, our Supreme Court concluded that it was necessary to vacate Hammand's sentences to ensure he was only punished for the crimes for which he was convicted. *Id.* at 279.

However, the facts before us are distinguishable from those in *Hamman*. Here, Calhoun has failed to direct us to any statements in the transcript where the judge criticizes the jury's verdict, and we find none. In fact, our review of the transcript reveals

nothing to suggest that Calhoun was punished for anything more than the offenses of which he was convicted. Under these circumstances, we find no error.

Calhoun next contends that several of the trial court's aggravating circumstances are erroneous. Sentencing decisions rest within the discretion of the trial court. *Newsome v. State*, 797 N.E.2d 293, 298 (Ind. Ct. App. 2003), *trans. denied*. Thus, we review such decisions only for an abuse of discretion. *Id.* An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

When the court imposes a sentence other than the presumptive sentence, we examine the record to determine whether the trial court sufficiently explained its reasons for selecting the sentence it imposed. *Id.* at 299. The trial court must identify all significant aggravating and mitigating circumstances, explain why each circumstance is aggravating or mitigating, and weigh mitigating circumstances against the aggravating factors. *Id.*

Here, Calhoun challenges the following aggravating factors: 1) the anguish suffered by Greathouse as a result of observing the killing; 2) the position in which Calhoun placed his daughter the night of the killing; 3) the anguish suffered by the Mayes family; 4) the permanency of Calhoun's actions as they relate to Mayes; 5) the anguish suffered by Mayes' daughter, Heidi Davis; 6) Calhoun waited for Mayes in the parking lot with a fully loaded 357 magnum; 7) the position in which Calhoun placed his brother by visiting his house while a fugitive and placing him in the position of either committing a crime or calling law enforcement on Calhoun.

The State is correct that four of the challenged aggravating factors are valid. Specifically, the anguish suffered by Greathouse in observing the killing; the position in which Calhoun placed his daughter the night of the shooting by going to her house, telling her that he killed someone, telling her goodbye and then disappearing into the woods; the position in which he placed his brother by visiting his house and requesting food, water, and supplies while a fugitive; and the fact that Calhoun waited for Mayes in the parking lot with a fully loaded 357 magnum are all specific circumstances of this crime. They are all therefore proper aggravating factors. *See Georgopulos v. State*, 735 N.E.2d 1138, 1144 (Ind. 2000) (stating that a trial court may consider the nature and circumstances of a crime to determine what sentence to impose).

However, the State correctly concedes that the trial court improperly relied on the following three aggravating factors: 1) the anguish suffered by the Mayes family, 2) the anguish suffered by Mayes' daughter, Heidi Davis, and 3) the permanency of Calhoun's actions as they relate to Mayes. This is because anguish and loss accompanies almost every killing and is therefore encompassed within the range of impact that the presumptive sentence is designed to punish. *See Bacher v. State*, 686 N.E.2d 791, 801 (Ind. 1997).

Nevertheless, the trial court's erroneous consideration of these aggravating factors does not render Calhoun's enhanced, consecutive sentences improper. Rather, when the sentencing court improperly applies an aggravating circumstance but other valid aggravating circumstances exist, a sentence enhancement may still be upheld. *Newsome*, 797 N.E.2d at 300. This occurs when the invalid aggravators played a relatively

unimportant role in the trial court's decision, and the other aggravating circumstances are sufficient to sustain the trial court's decision. *Id*

When a reviewing court can identify sufficient aggravating circumstances to persuade it that the trial court would have entered the same sentence even absent the impermissible factor, it should affirm the trial court's decision. *Id.* It is only when a reviewing court cannot say with confidence that the permissible aggravators would have led to the same result should it remand for resentencing by the trial court or correct the sentence on appeal. *Id.* Ultimately, a single aggravator may support the enhancement of a sentence. *Id.*

Here, there were other aggravating factors relied on by the trial court. For example, the trial court found that Calhoun was an armed fugitive from justice for almost six weeks who put the lives of law enforcement officers in jeopardy. In addition, the six-week manhunt for Calhoun cost the taxpayers thousands of dollars, exhausted the overtime budget of the North Vernon Police Department, and caused a delay in the department's other cases. Further, the North Vernon Police Department had to seek the assistance of the Indiana State Police, which also spent thousands of dollars on the manhunt. Lastly, as previously discussed, the trial court properly considered as aggravating factors the anguish suffered by Greathouse in observing the killing; the position in which Calhoun placed his daughter the night of the shooting; the position in which he placed his brother by visiting his house while a fugitive; and the fact that Calhoun waited for Mayes in the parking lot with a fully loaded 357 magnum.

Thus, although the trial court improperly considered three aggravating factors, we do not find that this error warrants a finding that the trial court erred in ordering enhanced and consecutive sentences. Rather, Calhoun's enhanced and consecutive sentences are amply supported by the proper aggravating factors delineated by the trial court. *See Newsome*, 797 N.E.2d at 301-02 (holding that the trial court did not abuse its discretion when it imposed enhanced and consecutive sentences despite its reliance on two improper aggravating factors).

We now turn to Calhoun's final contention that his sentence is inappropriate. Article VII, Section 6 of the Indiana Constitution gives this court the authority to review and revise sentences. We may revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Calhoun contends that his maximum sentence is inappropriate because such a sentence should be reserved for the worst of the offenders and offenses. According to Calhoun, he could not be the worst of the offenders because he does not have a prior criminal history.

In general, the maximum possible sentences should be reserved for the worst offenders and offenses. *Buchanan v. State*, 767 N.E.2d 967, 974 (Ind. 2002). In *Buchanan*, our Supreme Court further clarified the rule regarding the imposition of maximum sentences as follows:

> This is not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of

> offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.

Id. at 974 (emphasis omitted).

For example, in *Garrett v. State*, 756 N.E.2d 523 (Ind. Ct. App. 2001), *trans. denied*, this court affirmed the maximum sentence eight-year sentence for reckless homicide for a mother with no criminal history who strangled her child and then tried to conceal the crime by placing her son in a swimming pool. Despite five mitigating factors, including the facts that 1) Garrett had no prior criminal history; 2) Garrett had substantial family support; 3) putting Garrett in prison would be a hardship to her family; 4) Garrett's young age when she committed the crime; and 5) Garrett might respond well to short-term imprisonment, this court could not say that Garrett's maximum sentence was inappropriate. *Id.* at 535.

Here, Calhoun waited in the parking lot with a loaded gun for his ex-wife and her boyfriend to leave a Valentine's Day dinner. He shot the boyfriend, and drove to his daughter's house to tell her what had happened and say goodbye. He was a fugitive in the woods for six weeks who subjected his brother to possible prosecution when he came out of the woods for a day to seek food and supplies from that brother, and then returned to the woods. Calhoun cost taxpayers thousands of dollars, exhausted the overtime budget of the North Vernon Police Department, and placed the lives of law enforcement officers in jeopardy by hiding in the woods for six weeks. Based upon these facts, Calhoun's sentence is not inappropriate and we find no error. *See Groves v. State*, 787 N.E.2d 401 (Ind. Ct. App. 2003), *trans. denied*, (holding that in determining the

appropriateness of a sentence in light of the very worst offense and offender argument, we must concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on the nature, extent, and depravity of the offense for which the defendant was sentenced, and what it reveals about the defendant's character).

Sentence affirmed.

CRONE, J., concurs.

MAY, J., concurs in result.